

IN THE COURT OF COMMON PLEAS IN THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

STATE OF DELAWARE

v.

DAWN M. KEIPER

Defendant.

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) Case No.: 0912012482
) Cr.A. No.: K10-01-0593
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Pro Se

DECISION AFTER TRIAL

The defendant was charged with Disorderly Conduct pursuant to 11 *Del. C.* § 1301(1)(b) stemming from an incident at the Family Court in Dover, Delaware. This is the Court's decision following the criminal trial for this matter. The Court finds that the State has failed to prove the elements of disorderly conduct beyond a reasonable doubt. Therefore, the Court finds the defendant not guilty of the charge.

BACKGROUND

Dawn M. Keiper (“Defendant”) was seated in a waiting room at the Family Court in Dover, Delaware. Several other people, including children, were present. She was engaged in friendly “girl talk” with two women who were sitting beside her. They were talking about men and were all using foul language.

A Capitol Police Officer (“the Officer”) was positioned in a room which was separated from the waiting room by a 1-inch thick piece of glass. The Officer had had prior dealings with the defendant and knew her voice.¹ Just days earlier, he had warned her about using profanity in the courthouse. He heard Defendant using the word “fuck,” or a derivative of the word, but, he could not hear the sentence in which it was used. He also did not see anyone react to the language. After hearing the profane language, the Officer entered the waiting room and arrested the defendant. She was charged with one count of Disorderly Conduct in violation of 11 *Del. C.* § 1301(1)(b).

DISCUSSION

A person is guilty of Disorderly Conduct, under 11 *Del. C.* § 1301(1)(b), when:

(1) The person intentionally causes public inconvenience, annoyance or alarm to any other person, or creates a risk thereof by:

b. Making an unreasonable noise or an offensively course utterance, gesture or display, or addressing abusive language to any person present.

Profane language can constitute disorderly conduct in certain situations. In *Deeds v. State*, the Delaware Supreme Court held that sufficient evidence existed to find the minor defendant delinquent of disorderly conduct when the defendant yelled at a group of

¹ The Officer testified that he has arrested Defendant in the past for Disorderly Conduct and Terroristic Threatening, and that he testified against her in a Family Court proceeding. Defendant argued at trial that her arrest was retaliation for a case she has pending in the Family Court. The Court finds that no credible evidence exists to support Defendant’s assertion that her arrest in connection with the current incident was based on retaliation.

girls and called one of them “a bitch.” 2007 WL 646203, at *2 (Del.). In *State v. Henderson*, this Court found a defendant guilty of disorderly conduct when the evidence proved that the defendant directed the words, “fuck you,” and other profanity to a movie theater manager when other employees were present. 2005 WL 2249086, at *3.

In addition to the use of profane language, the context in which the profane language is used is an important consideration for the Court. *State v. Cooper*, 2004 WL 3312525 (Del. Com. Pl.). The Court has held that profane language does not rise to the level of disorderly conduct when is not directed against anyone, does not annoy, alarm, or inconvenience anyone, or cause any violence or breach of the peace. *Id.* at *3. Such language is protected by the First and Fourteenth Amendments, and “essentially amount[s] to bad manners.” *Id.*

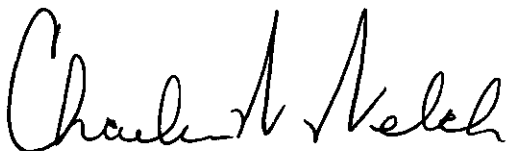
In this case, the State provided no evidence that Defendant’s language caused, or risked causing, inconvenience, annoyance or alarm to any of the people in the waiting room. The Officer testified that he only heard the word “fuck,” or some derivative of the word. He did not hear the context in which the word was being used. Furthermore, he did not see anyone in the waiting room react to Defendant’s language. Defendant was engaged in “girl talk” with two other women in the waiting room. No evidence was proffered by the State to indicate that Defendant was directing the profane language against anyone.

The Court finds that Defendant’s use of profanity amounts to nothing more than bad manners. Defendant’s language does not rise to the level of disorderly conduct of which she was charged. Therefore, the Court finds Defendant not guilty of the charge.

CONCLUSION

Since the State has failed to prove the elements of Disorderly Conduct, under 11 *Del. C.* § 1301(1)(b), beyond a reasonable doubt, the Court finds the defendant not guilty of the charge.

IT IS SO ORDERED THIS 24th DAY OF MARCH, 2010.



CHARLES W. WELCH
JUDGE